Communiqué

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PRESIDENT'S REPORT

Specialization - Should we be going there?

William Johnston
President

This issue is something that has been hanging over the head of the Law Society of Manitoba, and therefore, the heads of every temporary figurehead that (for a year) get to call themselves President.

Our Admissions and Education Committee (A&E) will shortly be providing recommendations to the Benchers on this topic. So, the time is now to speak your piece on the subject. Your Benchers would love to hear from you.

Should we be going there? And if so, why?

Firstly, who else is doing this? Only our friends at the Law Society of Upper Canada have dared to go there, so far. We would be the second. Alberta, for example, has made a conscious decision not to go there.

The traditional view has been that once lawyers have earned the privilege to practise, then they are "legal specialists"; ones that are entitled to appear before the Courts, and engage on their client's behalf on solicitors' transactions.

We are both barristers and solicitors, without further subdivision. Many of us choose to restrict our practice to family law, or criminal law, or conveyancing and estate work. Yet we maintain the right, subject to any restrictions on practice imposed by our regulatory body, to engage in any other field of endeavour. Just because I'm a civil litigator, doesn't mean that I can't do my own house deal!

That has been our tradition for 128 years in Manitoba. Has the time come for us to consider further subdividing our designation? What is the benefit to designating specialists? Some lawyers would answer that to them, the benefit would be the ability to hold themselves out to be particularly experienced in a chosen area of practice.

But does such a designation mean that the Law Society, with its mandate to protect the public, is telling the world that the designate has a higher level of expertise?

In a recent A&E meeting, one of our very able Lay Benchers, Dr. Jane Ursel, commented that from her perspective, "We are acknowledging someone who is very good (my emphasis)."

Is that what we are doing? The public will certainly think so. If that is what the public expects, can we live up to that expectation? If not, are we setting ourselves up for a major liability issue, if a designated specialist screws up?

And besides, just because a practitioner has completed a fixed regime and has been granted a specialist designation, does that mean that they can perform on any given related matter

BETTER than a "non-specialist."

For whom is the benefit of the designation created? Is it for the protection of the public, or is it for the advertising benefit of the individual practitioner? Is it really designed to help members of the public find the kind of lawyer that they need, or is it so that lawyers can claim greater expertise than other lawyers (and maybe charge more)?

This, I understand, was the real basis for Alberta abandoning the initiative. Their Benchers concluded that it is not within the Law Society's pure mandate of "protecting the public." They have chosen to regulate advertising strictly, but

allow lawyers to express "areas of preferred practice" without purporting to encourage the public towards any particular set of practitioners.

For obvious reasons, this initiative will not likely be a huge priority in rural Manitoba. We have about 1,800 practising lawyers in Manitoba, of which fewer than 300 practise outside the City of Winnipeg. There is neither the demand for pure specialization, nor the supply of clients available to any individual lawyer to restrict their practice that severely.

There is a risk that certifying specialists will create an inappropriate advantage for Winnipeg specialists over rural general practitioners. This might create a further disincentive for young lawyers to locate outside the big city.

One suggestion was that we meet this concern with the creation of a "Generalist" specialist designation, patterned on "Family" Physicians. Generalist specialist? How oxymoronic! I was contemplating the phrase the other day while I was waiting for my McDonalds order in their "Drive-Thru Parking" area.

It begs the question: Isn't that what we all are to start with? As a licensed lawyer, I specialize in the general practice of law.

Finally, how do we deal with the issue of lawyers that practise less than full time? Is a person who stays with their children part time and practises part time to be precluded from a designation? If we craft qualification rules to reasonably accommodate part time practitioners are we at risk of creating an unfair disadvantage to someone who chooses to practise full time?

How do you structure the criteria? Percentage of practice may be one component of a specialty designation system. So, someone with 400 active files, 100 of which are related to family law is not a family specialist, while another with 30 files, 25 of which are family law cases might be?

How do you determine where the lines are drawn on matters? After all, is a family file not a civil litigation matter also? Does a civil litigation specialist have to stay away from Rule 70?

These are tough questions! Maybe that's why the issue has been around so long without resolution!

One option our A&E committee is considering is that a pilot project be attempted, restricting the specialist areas to family and criminal law during the experiment. If successful, other areas would/could be added in time.

The risk of a pilot project is that if we do not like this on a policy basis, we should stop before we begin to consider designating specialists. Once granted, are you ever going to be able to take it away?

I expect that the A&E committee will be ready to make some recommendations to the Benchers this spring on this challenging issue. What are your thoughts? Let

your Benchers know!

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Benchers Meet, Short & Sweet

Allan Fineblit, Q.C.
Chief Executive Officer

Ok, Vice President **Garth Smorang** isn't short and President **Bill Johnston** is definitely not sweet, but the meeting of the Benchers of the Law Society of Manitoba on February 3, 2005 was both.

Our representative on the Council of the Federation of Law Societies of Canada, **Tim Killeen**, (tall and sweet) gave a report on the activities of the Federation. Tim reported that the Federation had fine tuned its litigation policy (clarifying how counsel would be instructed and allowing for unequal sharing of litigation costs in certain circumstances).

Tim also reported that the Federation of Law Societies is attempting to develop a protocol for law office searches with Justice Canada that will ensure the protection of client privilege. He also reported on initiatives to harmonize reimbursement funds across the country and international trade issues.

Benchers approved, in final form, rules that will require **disclosure** to the Complaints Investigation Committee of a member's prior discipline record in all cases where a new complaint is before them. This change reflects the comments of the Supreme Court of Canada in Finney v. le Barreau du Quebec, that this kind of disclosure is assumed by the Court whether it was actually made or not.

The Benchers approved draft rules to implement a decision they made in December allowing members with less serious discipline records to apply for a **pardon**. A pardon will mean that the Law Society no longer considers the conviction to reflect adversely on the member's character. The draft rules will now be translated for approval in final form at the March Benchers meeting. (We will circulate the approved rules and more information after that meeting).

The Benchers amended the Reimbursement Fund Payment Guidelines to include a 2 year time limit (with discretion to extend for up to 8 additional years in appropriate circumstances) from the date the loss is discovered or reasonably ought to have been.

A rule amendment was approved in principle which provides that contact with the **Equity Ombudsperson** is confidential and should not be shared with the Discipline side of the Law Society. While this has been the practice, it was agreed that a rule was required to give comfort to those who might be reluctant to come forward for advice and assistance from the Equity Ombudsperson. A final version

of the rule will be considered in March.

Lay Bencher **Bill Burns** was appointed Acting Complaints Commissioner while Complaints Commissioner Claudia Wright is on a medical leave of absence. Finally, Benchers reviewed the budget for the 2005/06 fiscal year, and they did all that in under two hours. Like I said, short and sweet.

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Allan's Odds and Ends

Allan Fineblit, Q.C.
Chief Executive Officer

1. In the last issue I told you about the good work of David Matas and Chris Iwanchuk monitoring the Ukrainian election. I am pleased to tell you that they were joined in their work by **Therese Koturbash**, **John Petryshyn** and **Florence Mathews**. In Therese's words "It was an amazing, amazing time to be in Ukraine".

2. CanLII, the Federation of Law Societies' free virtual library, has a new search engine. Reports are that it is fabulous. You can try it for yourself at canlii.org.

3. Don't miss the singing and dancing lawyers (including the Law Society's General Counsel **Darcia Senft**) in the MBA production of **Cabaret**. The play runs from April 28th to 30th and you can call 942-6537 for tickets.

4. It isn't often that clients take the time to write the Law Society praising their lawyer so our President, Bill Johnston, was tickled to open his mail and find a very satisfied client writing him singing the praises of **Rocky Kravetsky**. The client explained "I have written this letter of appreciation as I felt sometimes we . . . do not thank enough the dedicated 'silent majority' of practitioners". How true.

5. Law Society Staff News: Discipline Director **Leah Kosokowsky** is back from her maternity leave and **Sheila Redel** just celebrated her 10th anniversary as Law Society of Manitoba's Director of Professional Education.

6. Roll up your sleeves. Just Cause is a program hosted by Canadian Blood services to encourage donations by Manitoba's justice community. It will take place in May and you should expect your invitation to participate shortly.

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Membership Changes

The following members have voluntarily changed their status as indicated on the dates shown:

Practising to Inactive
December 10, 2004 Karen I. Simonsen
January 1, 2005 Jonathan E. Barg
January 1, 2005 Ted M. Sutcliffe
January 1, 2005 Bruce I. Mellon
January 1, 2005 Jennifer R. Kubas
January 1, 2005 A. Lorne Campbell
January 1, 2005 Daniel D. Kreklewich
January 31, 2005 Annette J.R. Horst

Non-Practising to Practising
January 1, 2005 George Tacik
January 3, 2005 Diane H. Hartley
January 4, 2005 Alona C. Mercado
January 7, 2005 Omar Siddiqui
February 1, 2005 Jennifer M. Mann
February 2, 2005 Kenneth E. Andrews

Inactive to Practising
January 1, 2005 J. Douglas Strange
January 1, 2005 Joan R. Jack

Transfer from Another Province
The following members were called to the Bar of Manitoba on January 19, 2005 and are now entitled to practise law in this jurisdiction, having fulfilled the requirements of Rule 5-14:

Ryan G. Rempel of the Law Society of Saskatchewan
William R. Middleton of the Law Society of Upper Canada

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Playing by the Rules

Allan Fineblit, Q.C.
Chief Executive Officer

He was a member of the famous double play combination of Saranchuk to Fineblit to Adleman on the Buchwald Asper baseball team that won the

championship in the first season of the Bar Association Baseball League. I know the firm name is now Pitblado but in 1976, Pitblado had their own powerhouse team (starring Emilio Guercio if I remember correctly) on the losing end of that championship game.

I will digress to remind you that in 1976 it was the practice of law firms to list every partner in the firm name. I always felt sorry for the receptionist who had to answer a busy phone (no direct lines in those days) with the words "Buchwald Asper Henteleff Goodwin Green Zitzerman and Shead". Simpler times indeed!

Walter Saranchuk has many claims to fame, not the least of which is being Paul's older brother. Wally was also the guy I always went to when I needed litigation advice. Lord knows why! Oh, don't get me wrong, Wally knows his stuff. Its just that every time I asked him a question his answer was always another question: "Have you checked the Queen's Bench Rules?"

Remember, in those days we were not blessed with Karen Busby's wonderful annotated version of the Rules. Checking the Rules was not fun and asking Wally, whose immaculate office was close to mine, seemed like a better alternative. I did learn my Queen's Bench Rules but I vowed that when I got old and wise I'd be much kinder if anyone ever thought to ask me for advice.

I hasten to point out (another digression) that Walter Saranchuk was only a few years older than me but for a lawyer with only two or three years of experience (me) someone with six or seven (Wally) seemed very much like an old-timer.

Ok, so I'm now old and very wise. People do call regularly to ask me questions. I never have asked them if they have checked the Code of Professional Conduct, not only because of the vow I took when I lived in "Wally World" . . . there are three other good reasons. First, the Code of Professional Conduct is long (75 pages) and has to be read in conjunction with The Legal Profession Act (64 pages) and the Rules (133 pages). Secondly, the Code of Professional Conduct is, well . . . tired, and it badly needs a re-write. Finally and most importantly, I like getting phone calls . . . no really, I do.

A lot has changed in 30 years. Most of it is good change but not all of it. Wally has grey hair (hey, at least he has hair) and doesn't play baseball any more. People don't use the phone nearly as much as they once did. The practice of law has gotten very complicated. The CanLII website adds 6000 new Canadian cases each month to its collection. The benefit of instant communication is also a curse because clients and colleagues expect instant answers.

It is truly remarkable then, that on April 21st, 2005 we will host a lunch honouring seven lawyers who have practised safely and effectively for 50 years. I am not so sure that any of the 79 students in this year's CPLED class will still be practising 50 years from now given the pace, the volume and the economics of the practice they are about to enter.

You can improve the odds though. Here are the five most common answers I give and if you can manage all five of them it's my opinion that you will greatly

improve the longevity of your life as a lawyer. The five answers are: keep a sense of humour, keep of sense of perspective, follow your instincts, do the right thing, and, if all else fails . . . you can always read those Rules.

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Notice of Benchers Meetings

The next meeting of the Benchers of The Law Society of Manitoba will be held on **Thursday, March 24, 2005 at 12:30 p.m.** in the Society's classroom, 219 Kennedy Street, Winnipeg, Manitoba. Members of the Society are encouraged to attend and participate in the deliberations of the governing body.

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Approval of Principals for Students Articling in 2005-2006

If you plan to hire an articling student for 2005-2006, you must apply to the Law Society for approval to act as a principal. Prospective principals must apply for approval each year. Previous approval expires at the end of each articling term. You must be approved to act as a principal before hiring a student. Please contact Cynthia Pino at 942-5571 or cpino@lawsociety.mb.ca to request an application form or to obtain further information.

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Fifty Year Lunch

On April 21st, 2005 at noon in the Crystal Ballroom of the Hotel Fort Garry, the Law Society of Manitoba will honour seven lawyers who have practised law for 50 years or more. You will get your invitation with all the details shortly, but this is your advance notice so you can book the date.

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In Memoriam

Colonel Alphonse Elie Beaupre, Q.C. who passed away on October 1, 2004 at the age of 81. Colonel Beaupre served with the Royal Canadian Air Force in

England during World War II. Upon his return to Canada, Colonel Beaupre obtained his degree in law at the University of Manitoba and received his call to the Bar on June 2, 1951. He then rejoined the Royal Canadian Air Force, serving in the Judge Advocate General's Office. He served with distinction within Canada and overseas, retiring as a full Colonel in 1983. In December, 1975 Colonel Beaupre received a federal Queen's Counsel appointment. Colonel Beaupre resided in Thunder Bay, Ontario at the time of his death.

Harry Elliot Gordon, Q.C. who passed away on November 4, 2004 at the age of 85. Mr. Gordon received his call to the Bar on December 1, 1950. He began his career with the firm, Cantor Matas Simkin. In 1951 he became a partner in the firm Kushner, Breen, Gordon where he continued to practise law for 53 years until his death. Mr. Gordon was appointed Queen's Counsel in December, 1982. He served on the Board of many community organizations, including the Board of Regents of the University of Winnipeg, the Manitoba Transport Board and the Public Utilities Board.

Delbert Friesen Plett, Q.C. who passed away on November 4, 2004 at the age of 56. Mr. Plett received his call to the Bar on June 26, 1973. He practised law in Steinbach, Manitoba for his entire career until he retired due to ill health in June, 2004. Mr. Plett was awarded a Federal Queen's Counsel appointment in July, 1992. He served as a Bencher of the Law Society from 1996 to 1998.

Wasyl Michael Swystun, Q.C. who passed away on November 12, 2004 at the age of 69. Mr. Swystun received his call to the Bar on January 18, 1961. He practised law in Winnipeg for 23 year before transferring to British Columbia, where he resided at the time of his death. Mr. Swystun obtained his Master of Laws degree in 1965 and was appointed Queen's Counsel in December, 1978.

Thaddeus Lawrence Charne who passed away on November 14, 2004 at the age of 81. Mr. Charne received his call to the Bar on July 18, 1951. He began his legal career in private practise and was associated with Arnovitch and Leipsic as Vice President and General Counsel. In 1970 he was appointed President of St. Maurice Properties Ltd and in 1972 he joined Commerce Capital Properties Ltd. In 1978 he purchased this company and renamed it First Commercial Management Inc. Mr. Charne served as a community volunteer to numerous organizations. Mr. Charne was appointed Queen's Counsel in December, 1968 and was appointed an Honourary Member of the Law Society in 2001.

Sondra Louise Braid who passed away on November 15, 2004 at the age of 40. Ms Braid received her call to the Bar on June 30, 1988. Ms Braid practised family law, first with Newman, MacLean and then Wilder, Wilder & Langtry. In 1991 she moved to Minnesota and in 1999 obtained her teaching degree in Texas. At the time of her death, Ms Braid was residing in South Korea where she had accepted a one-year post as an English instructor.

The Honourable Associate Chief Judge Bruce Harold Miller who passed away on December 4, 2004 at the age of 54. Associate Chief Judge Miller received his call to the Bar on June 25, 1974. He began his legal career employed as a Crown Attorney and then Senior Crown Attorney with Manitoba Justice and

in 1989 was appointed Director of Prosecutions. In December, 1990 he was appointed Queen's Counsel. In 1994 Associate Chief Judge Miller was appointed a judge of the Provincial Court and in 1995 was appointed Associate Chief Judge of that court. He served as a Bencher of the Law Society of Manitoba from 1988 to 1994 and was a seminar leader for the Law Society's Bar Admission Course as well as a lecturer for the Continuing Legal Education program. Associate Chief Judge Miller served on numerous community boards, including the Assiniboine Park Hockey Association Rangers, Manitoba Special Olympics and Betel Heritage Foundation.

John Douglas Montgomery, Q.C. who passed away on December 7, 2004 at the age of 77. Mr. Montgomery received his call to the Bar on November 30, 1960. Following his call to the Bar, Mr. Montgomery joined the Department of Justice as a Crown Attorney for the Public Prosecutions Department. He was subsequently appointed Director of Criminal Prosecutions and General Counsel and also served as Chief Prosecutor for the City of Winnipeg. He retired from law in 1998. During his retirement, Mr. Montgomery authored three books on notable cases he had prosecuted during his career. He was appointed Queen's Counsel in December, 1971.

Michael Thomas Tracey who passed away on December 20, 2004 at the age of 55. Mr. Tracey received his call to the Bar on June 28, 1979. He began his legal career as a partner with the firm, Martens Alsip Tracey Zyla and in 1984, opened his own law office. Mr. Tracey practised law for 25 years and was a practising member of the Law Society at the time of his death.

Albert Henry Redekopp who passed away on December 30, 2004 at the age of 59. Mr. Redekopp received his call to the Bar on June 25, 1987. Upon receiving his call, Mr. Redekopp opened his own law office and practised law as a sole practitioner for nine years. In 1996 he joined the firm, Redekopp & Bargen and in 1997, he practised law under the firm name, Redekopp & Associates. Mr. Redekopp retired from law in August, 2003.

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